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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

THOMAS RICHEY,

Plaintiff,

v.

FEDEX FREIGHT, INC.,

Defendant.

Case No. _____

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant FedEx Freight, Inc., (hereafter “FedEx Freight”) by and through counsel, hereby files this Notice of Removal of this cause from Montana Thirteenth Judicial District Court, Yellowstone, County, in which it is now pending, to the United States District Court for the District of Montana, Billings

Division. In support of this Notice of Removal, Defendant respectfully shows the Court the following:

1. On January 29, 2021, Plaintiff Thomas Richey (“Plaintiff”), commenced this action by filing his Complaint in Case No. DV 21-0086 in the Montana Thirteenth Judicial District Court, Yellowstone County, alleging the Defendant violated the Montana Wrongful Discharge From Employment Act, MCA § 39-2-904.

2. Attached as **Exhibit A** are true and correct copies of the Summons and Complaint and Answer. These documents constitute all of the process and pleadings, filed in the State Action to date of which FedEx Freight is aware.

3. Statement of applicable law – Diversity Jurisdiction.

A. Diversity of Citizenship

4. Plaintiff is a resident of Montana. (Complaint ¶ 1).

5. FedEx Freight is a corporation organized under the laws of the State of Arkansas with its principal place of business in Memphis, Tennessee, located at 8285 Tournament Drive, Memphis, Tennessee 38125.

6. Nearly all of FedEx Freight's corporate functions are conducted and based in Arkansas and Tennessee, including human resources, finance, legal, payroll, and executive and administrative support functions that are important to FedEx Freight’s strategic leadership and day-to-day operations.

7. All of FedEx Freight’s senior executive team is based in its corporate headquarters office in Memphis, Tennessee, where FedEx Freight’s parent companies, FedEx Freight Corp. and FedEx Corporation also have their principal place of business. For the purpose of determining diversity citizenship, FedEx Freight is and has been, both upon the filing of the subject Complaint and the filing of this removal petition, a citizen of the State of Tennessee. See Hertz Corp. v. Friend, 559 U.S. 77, 1192 (2010) (“We conclude that ‘principal place of business’ is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities. It is the place that Courts of Appeals have called the corporation's ‘nerve center.’ And in practice it should normally be the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination”).

8. FedEx Freight is a wholly-owned subsidiary of FedEx Freight Corporation, a corporation incorporated under the laws of the State of Delaware. FedEx Freight Corporation’s principal place of business is located at 8285 Tournament Drive, Memphis, Tennessee, 38125.

9. FedEx Freight Corporation is a wholly-owned subsidiary of FedEx Corporation, a publicly-held corporation incorporated under the laws of the State of Delaware. FedEx Corporation’s principal place of business is located at 942

Shady Grove Road, Memphis, Tennessee. FedEx Corporation's functions are centrally managed from its headquarters in Memphis, Tennessee.

10. For these reasons, the Memphis location is considered to be the corporate headquarters and the "home office" for FedEx Freight from which senior leadership directs, controls and coordinates FedEx Freight's corporate activities., this lawsuit involves citizens of different states, namely Plaintiff, a Montana citizen and resident, and FedEx Freight, a Tennessee citizen. See 28 U.S.C. § 1332(a)(1).

B. Amount in Controversy

11. Upon information and belief, the amount in controversy exceeds \$75,000. "The amount in controversy is not measured by the low end of an open-ended claim, but rather by a reasonable reading of the value of the rights being litigated." See generally Werwinski v. Ford Motor Co., 286 F.3d 661, 666 (3rd Cir. 2002).

12. Plaintiff has alleged damages for lost wages and fringe benefits as well as punitive damages (Complaint ¶¶ 18, 22, 25).

13. While FedEx Freight denies any wrongdoing and/or that Plaintiff is entitled to damages, claims for damages as alleged in the Complaint exceed \$75,000.00 exclusive of interests and costs.

C. Removal is Proper

14. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 in that this is a civil action between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

D. Removal is Timely

15. Defendant, FedEx Freight, Inc., was served with the summons and a copy of the State Action on January 29, 2021, by delivering the same to its registered agent for service of process, CT Corp., in Missoula, MT.

16. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 and §1441 because there is complete diversity and the amount in controversy exceeds \$75,000.00.

17. Defendant is filing this Notice of Removal within 30 days after initial receipt of the summons and pleadings.

18. Pursuant to 28 U.S.C. §1446(a), the United States District Court for the District of Montana, Billings Division, is the proper district in which to file this removal because the State Action was filed in Yellowstone County, Montana.

19. Pursuant to 28 U.S.C. § 1446(d), Defendant is filing a Notice of Filing the Notice of Removal with the Clerk of the Court of the Thirteenth Judicial District, Yellowstone County contemporaneously with the filing of said Notice of Removal in this Court, giving notice to all parties and the State Court. A copy of

the Notice of Filing the Notice of Removal (without its exhibits) is attached hereto as **Exhibit B**.

WHEREFORE, Defendant notifies this Court that this cause of action has been removed from the Montana Thirteenth Judicial District Court, Yellowstone County, to the United States District Court for Montana, Yellowstone Division pursuant to the provisions of 28 U.S.C. § 1332 and § 1496.

DATED this 23rd day of February, 2021.

BROWNING, KALECZYC, BERRY & HOVEN, P.C.

By /s/ Oliver H. Goe
Oliver H. Goe

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2021, a true copy of the foregoing was served:

Via ECF o the following parties:

Michael F. McGuinness
Patten, Peterman, Bekkedahl & Green, PLLC
2817 Second Ave. North; Ste 300
Billings, MT 59101

/s/ Oliver H. Goe
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